

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 89 of 1994

in

SPECIAL CIVIL APPLICATION No 7197 of 1990

with

SPECIAL CIVIL APPLICATION No 7991 of 1997

with

SPECIAL CIVIL APPLICATION No 12302 of 1994

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and Sd/-

MR.JUSTICE M.S.SHAH Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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STATE OF GUJARAT

Versus

C.V. PARMAR

Appearance:

In Letters Patent Appeal No. 84 of 1994
GOVERNMENT PLEADER for Appellants
MR YN OZA for Respondent No. 1 to 10
In Special Civil Application No. 7991 of 1997
MR YN OZA for petitioners
GOVERNMENT PLEADER for Respondents
In Special Civil Application No. 12302 of 1994
MR JV JAPTEE for petitioners
GOVERNMENT PLEADER for Respondents

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

MR.JUSTICE M.S.SHAH

Date of decision: 01/04/99

CAV JUDGEMENT (Per Shah, J.)

The Letters Patent Appeal as well as the cognate petitions raise common questions of law and fact and were, therefore, taken up for final hearing together and are being disposed of by this common judgement. All the proceedings pertain to the issue of allotment of land in Gandhinagar to Government employees who are on the establishment of the Sachivalaya at Gandhinagar and in offices situate in Gandhinagar District.

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#. The facts leading to filing of these proceedings, as averred by the petitioners, are as under :-

2.1 The petitioners of Special Civil Application No. 7179/90 (the respondents in Letters Patent Appeal No. 89/94), the petitioners of Special Civil Application No. 7991/97 and the petitioners of Special Civil Application No. 12302/94 are employees working in Sachivalaya or in Government offices within Gandhinagar District. The petitioners are staying in the premises constructed by the Gujarat Housing Board at Gandhinagar. The said premises were constructed by the Gujarat Housing Board and the petitioners were permitted to occupy such premises on the basis of allotment made to the petitioners under hire purchase scheme. The land below construction is granted to the petitioners on lease basis whereas the constructed premises are given on licence basis. None of the petitioners have acquired right of ownership in the premises constructed by the Gujarat Housing Board till the Government introduced the policy of allotment of plots in Gandhinagar without following the procedure of auction. The said policy was introduced by Government Resolution dated 29.6.1988. The State Government employees are eligible for allotment of plots at the rates prescribed in the relevant Government Resolution/s. Pursuant to the aforesaid Government Resolution dated 29.6.1988, the petitioners of all the three petitions submitted their separate individual applications to the Collector, Gandhinagar for the purpose of allotment of plots. However, the authorities declined to accept the said applications on the ground that the petitioners were not eligible for allotment.

2.2 Hence, 10 petitioners for themselves and claiming to be persons representing similarly situate other

persons filed Special Civil Application No. 7197 of 1990 for quashing and setting aside clause 2.3(d)(2) of the Schedule to the Government Resolution dated 29.6.1988. As per the said clause, persons having land or constructed premises in Gandhinagar city were made ineligible to apply for allotment of land under the aforesaid scheme. Clause 2.3(d)(2) provided that the government employees not owning/possessing plot of land or house/flat in Gandhinagar in his/her name or in the name of his/her spouse or dependents shall be entitled to the allotment of land. The petition ultimately came to be allowed by a learned Single Judge of this Court on 16.12.1993. The learned Single Judge declared clause 2.3 (d)(2) of the schedule to the aforesaid Government Resolution and the action pursuant thereto as arbitrary and discriminatory.

2.3 In view of the said judgment many persons applied to the authorities under the aforesaid scheme. However, the aforesaid judgment in Special Civil Application No. 7197/90 came to be challenged by the authorities in the present appeal. While admitting the appeal, this Court granted interim stay of implementation of the aforesaid judgment dated 16.12.1993. Thereafter Civil Application No. 6729 of 1996 came to be filed by the original petitioners of Special Civil Application No. 7197 of 1990, inter alia, praying that the authorities be restrained from making any allotment of plot to any one and this Court directed the Government to maintain status quo. The State Government thereafter filed Civil Application No. 6271 of 1997 for vacating the aforesaid interim order. On 11.8.1997 this Court modified the interim order to the effect that the State Government was directed to reserve 10 plots for respondent Nos. 1 to 10 in the appeal (i.e. the original petitioners in Special Civil Application No. 7197 of 1990). In other words, the interim direction during pendency of the appeal came to be confined to the original 10 petitioners of Special Civil Application No. 7197 of 1990.

2.4 In view of the above modification, 566 persons claiming to be similarly situate as the petitioners of Special Civil Application No. 7197 of 1990 filed Special Civil Application No. 7991 of 1997 for the same reliefs and for directing the authorities to consider all the petitioners as eligible for the purpose of allotment of plots in Gandhinagar by ignoring clause 2.3(d)(2) of the schedule to the Government Resolution dated 29.6.1988 and to make allotment of plots to the petitioners under the aforesaid scheme.

2.5 Similarly, 10 more persons filed Special Civil Application No. 12302 of 1994 claiming the same reliefs as is the previous petitions. However, petitioner Nos. 1 to 4 of Special Civil Application No. 12302 of 1994 have purchased the plots from the Government at public auctions and petitioner Nos. 1 to 4 of Special Civil Application No. 12302 of 1994 have constructed houses on their respective plots. Petitioner Nos. 5 to 10, however, have not constructed houses on their plots.

#. The main contentions raised in the petition (i.e. Special Civil Application No. 7197/90) were :-

- (i) Initially persons having land/building in Ahmedabad or Gandhinagar were made ineligible to get allotment of plot at Gandhinagar under the scheme, but thereafter only persons having land/building in Gandhinagar were made ineligible to apply for the land in Gandhinagar, that is, ineligibility of Government employees having land/building in Ahmedabad was removed and, therefore, the employees having land/building in Gandhinagar were given discriminatory treatment by treating equals as unequals.
- (ii) The persons having land/building in Ahmedabad or Gandhinagar had earlier applied under the aforesaid scheme of 1988 and had earlier filed affidavits that they do not have any land/building in Ahmedabad or Gandhinagar. After allotment and before handing over possession, it was found that many persons had filed false affidavits and, therefore, under the scheme such persons could not have been allotted plots and the allotment in their favour was required to be cancelled. However, the State Government took a decision for giving possession of plots to even such persons and, therefore, the petitioners who honestly disclosed the fact that they had land/building in Gandhinagar were punished for stating the truth whereas those who filed false affidavits were given possession of the plots in Gandhinagar even though they had land/building in Gandhinagar.
- (iii) While allotting plots to MLAs and MPs, the State Government has not imposed any condition that those having land/building in Gandhinagar shall not be treated as eligible and, therefore, also there is discrimination.

#. In response to the notice issued by this Court, affidavit in reply was filed by the Joint Secretary in the R&B Department of the State Government on 4.12.1993 pointing out that -

The State Government had appointed the study group to consider the problems of the Government employees for the purpose of residential plots and to provide them residential plots at Gandhinagar. Between 1981 and 1987 no decision was taken by the Government for allotment of residential plots. Some of the employees had filed writ petitions in this Court and brought an interim injunction not to finalize the allotment of plots during pendency of those petitions. The interim relief was ultimately vacated in 1987 and, therefore, the Government issued the aforesaid resolution dated 29.6.1988 laying down the eligibility criteria.

Every employee submitting application was required to file an affidavit stating that he is not in possession of any residential flat, house or plot in his/her own name or in the name of his/her family members. The Government had taken the decision to inquire in the matter of filing false affidavits for getting flat or plot in Gandhinagar and investigation is going on by the CID, Crime. Since the petitioners are having their own house in Gandhinagar, it cannot be said that they had been discriminated at any stage under the scheme of allotment of residential plots and, therefore, the petition deserved to be dismissed.

#. Special Civil Application No. 7197 of 1990 came to be heard and decided by a learned Single Judge of this Court (V.H. Bhairavia, J.) who by his judgment dated 16.12.1993 held that for all practical purposes Ahmedabad and Gandhinagar were one city in view of the following circumstances :-

- (a) The Government employees serving at Gandhinagar are drawing DA, HRA, CLA, Medical Allowance etc. on the same rate at which the Government employees serving at Ahmedabad are being paid.
- (b) Ahmedabad Municipal Corporation has extended its transport facilities to

Gandhinagar.

(c) There is extensive development between Gandhinagar and Ahmedabad.

(d) Many of the Head Offices which are required to be in Gandhinagar are located in Ahmedabad.

(e) The employee serving at Gandhinagar are permitted to stay at Ahmedabad and vice-a-versa.

The learned Single Judge, therefore, held that there was no distinction between Ahmedabad and Gandhinagar and then struck down clause 2.3(d)(2) of the schedule to the Government Resolution dated 29.6.1988. The learned Single Judge further observed that "the Government allotted plots to the employees owning houses at Ahmedabad and the Government also regularized cases of those employees who have obtained Government plots by filing false affidavit. Only in cases of the petitioners and other similarly situate employees, who have honestly disclosed the fact of owning the flats/tenements, they have been denied right to occupy Government plots.....therefore, the action of the Government is arbitrary and discriminatory and is violative of Article 14 of the Constitution". The learned Single Judge, therefore, struck down the aforesaid clause as he saw no rational and justifiable classification. The learned Single Judge held that the petitioners are entitled to occupy Government plots at Gandhinagar, but reserved liberty to the Government to recover from the petitioner the price of the plots at the rate recovered from the government employees who own houses at Ahmedabad and have been allotted government plots at Gandhinagar.

It is against the aforesaid judgment of the learned Single Judge that the State Government has preferred the Letters Patent Appeal. The other two petitions were ordered to be heard alongwith this appeal.

#. At the hearing of this appeal, the learned Government Pleader submitted that the learned Single Judge had erred in holding that Ahmedabad and Gandhinagar were one and the same city. It was submitted that by no stretch of imagination it could have been said that Ahmedabad and Gandhinagar are the same city. Ahmedabad City is being managed and administered by the Ahmedabad Municipal Corporation. They are two different geographical areas with a distance of about 30 kms. If the Government

employees serving at Gandhinagar have land/building at Ahmedabad and are residing at Ahmedabad, they would not be in a position to discharge their duties effectively at Gandhinagar by commuting daily from Ahmedabad to Gandhinagar and there was, therefore, full justification in the Government allotting plots at Gandhinagar to the employees who had a plot/building at Ahmedabad. Hence, the petitioners who are residing in Housing Board tenements/plots allotted to them under hire purchase scheme can continue to reside in such tenements/plots at Gandhinagar and effectively discharge their duties at Gandhinagar and they were not required to be given any plot at Gandhinagar. It was further submitted that it was after allotment of plots that the Government had found that some of the employees had filed false affidavits that they did not have any land/building at Ahmedabad but since the relevant clause 2.3(d)(2) was amended so as to remove the ineligibility of employees having land/building at Ahmedabad, the question whether the affidavits were false or not lost significance.

#. In rejoinder, the learned counsel for the petitioners submitted that the Housing Board Tenements were not legally owned by the petitioners, but the petitioners were merely tenants or licensees and that in any case the construction area of the Gujarat Housing Board plots was very small ranging between 49 sq.mtrs and 71 sq.mtrs. Hence, it cannot be said that the accommodation available with the petitioners in the Housing Board plots was sufficient so as to make them ineligible for allotment of plots at Gandhinagar. It was further vehemently submitted by the learned counsel for the petitioners that the false affidavits were filed by not only those employees having land/building at Ahmedabad but also by the employees who were having land/building at Gandhinagar and that when the petitioners were belonging to the same category as such employees, there was no justification for non-consideration of the petitioners' case and continuing with the allotment of plots to the persons who had filed false affidavits.

#. Having heard the learned counsel for the parties, we are of the view that the learned Single Judge was not right in holding that Ahmedabad and Gandhinagar were one city. Both are different geographical areas under the jurisdiction of different statutory local authorities. Ahmedabad is now under the Ahmedabad Municipal Corporation whereas Gandhinagar which was earlier under the Notified Area Committee is under the administration of the Gandhinagar Municipality. Both the areas are separated by about 30 Kms. Merely because there may be

some facilities like extended bus services and merely because the government employees at both the places draw HRA or City Compensatory Allowance at the same rate, it does not mean that Ahmedabad and Gandhinagar are the same city. The condition in clause 2.3(d)(2) of the schedule to the Government Resolution that persons having land/building in Gandhinagar are not eligible to get allotment of Government plot at Gandhinagar cannot be said to be irrelevant to the object said to be achieved viz. the Government had adopted the policy of making Government plots in Gandhinagar available to the Government employees serving in Gandhinagar but not having any land/building in Gandhinagar. The idea was to give an incentive to the employees staying out of Gandhinagar to come and reside in Gandhinagar so as to save their time in commuting and in order to dedicate themselves to Government service more vigorously. Clause 2.3(d)(2) of the Government Resolution dated 29.6.1988 cannot, therefore, be said to be violative of Article 14 of the Constitution.

#. As regards the challenge made by the petitioners that no such condition was imposed while allotting lands to MPs and MLAs, the contention cannot be accepted because the Government employees on the one hand and elected representatives like MPs and MLAs on the other hand constitute two separate and different classes. The nature of functions and duties of the elected representatives is altogether different from the nature of functions and duties of the Government employees and they can never be treated as falling in the same class. As per the settled legal position, Article 14 can be said to have been violated only when equals are treated unequally and not when unequals are treated unequally.

##. Even while negating the main contention raised on behalf of the original petitioners, we do feel distressed by the fact that even when the Government found that some of the employees had filed false affidavits to the effect that they were not having any land/building in Gandhinagar and the falsity of their statements was found to have been proved, albeit after allotment, the Government still handed over possession of the Government plots to such employees. It, therefore, appears to us that if the Government still has sufficient number of Government plots in Gandhinagar which can be made available to the Government employees, if those of the petitioners whose accommodation was comparatively very small in construction as compared to their status in Government service and who had applied for allotment of Government plot under the aforesaid Government Resolution

dated 29.6.1988 again apply for allotment of Government plots in Gandhinagar within a period of one month from today, the Government shall consider their case sympathetically (and not to treat such applications as fresh applications), particularly when the Government had shown such sympathy to the employees who were found to have filed false affidavits as stated above. We clarify that those Government employees who have already purchased Government plots in Gandhinagar need not be extended this benefit.

##. Subject to the aforesaid direction, the appeal is accordingly allowed and the judgment dated 16.12.1993 delivered by the learned Single Judge in Special Civil Application No. 7197 of 1990 is hereby set aside and Special Civil Application Nos. 7197 of 1990, 7991 of 1994 and 12302 of 1994 stand disposed of in terms of the aforesaid observations.

Sd/-

(K.G.Balakrishnan, C.J.)

Sd/-

(M.S. Shah, J.)

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